

23.405

of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated products at or below the micro-purchase threshold.

[65 FR 36019, June 6, 2000]

23.405 Procedures.

(a) These procedures apply to all agency acquisitions of EPA-designated products, including micro-purchases, if—

(1) The price of the product exceeds \$10,000; or

(2) The aggregate amount paid for products, or for functionally equivalent products, in the preceding fiscal year was \$10,000 or more. RCRA requires that an agency include micro-purchases in determining if the aggregate amount paid was \$10,000 or more. However, it is not recommended that an agency track micro-purchases unless it intends to claim an exemption from the requirement to establish an affirmative procurement program in the following fiscal year.

(b) Contracting officers should refer to EPA's list of EPA-designated products (available via the Internet at <http://www.epa.gov/cpg/>) and to their agencies' affirmative procurement programs when purchasing supplies that contain recovered material or services that could include supplies that contain recovered material.

(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall base the justification on the inability to acquire the product—

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(1) Competitively within a reasonable period of time;

(2) At reasonable prices; or

(3) To reasonable performance standards in the specifications, provided a written determination by technical or requirements personnel of the performance standard's reasonableness is included with the justification. The technical and requirements personnel must base their determination on National Institute of Standards and Technology guidelines, if available.

(d) Agencies must establish procedures for consolidating and reporting contractor estimates required by the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

[65 FR 36019, June 6, 2000, as amended at 68 FR 43858, July 24, 2003]

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated products containing recovered materials.

(b) Insert the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding \$100,000 that include the provision at 52.223–4. If technical personnel advise that estimates can be verified, use the clause with its *Alternate I*.

[65 FR 36019, June 6, 2000, as amended at 68 FR 43858, July 24, 2003]

Subpart 23.5—Drug-Free Workplace

SOURCE: 54 FR 4968, Jan. 31, 1989; 55 FR 21707, May 25, 1990, unless otherwise noted.

23.500 Scope of subpart.

This subpart implements the Drug Free Workplace Act of 1988 (Pub. L. 100–690).

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—